IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2709 OF 2006

Citibank N.A. ... Petitioner

Vs.

State of Maharashtra & Anr. ... Respondents

Mr. J.S.Saluja, Advocate, i/b. M.V.Kini & Co.,Advocates for the petitioner.

Mr. D.P.Adsule, APP, for the State.

CORAM: J.H.BHATIA,J.

DATE : 28th June, 2007.

P.C.

1. Heard Mr. Saluja, learned Counsel for the petitioner and Mr. Adsule, APP, for the State.

2. Respondent No.2 had taken some loan from the petitioner-Bank for purchase of vehicle which was registered as MH-43-H-124 in December, 2004. The loan was to be repaid in 47 equal monthly instalments of Rs.19,263/- each. He had regularly paid 19 instalments. However, by December,2006, he had defaulted in making

four monthly instalments. According to the petitioner, on 29.11.2006, some unknown persons approached the vehicle and forcibly removed the driver of the vehicle from the cabin and took possession of the vehicle. In view of this, the owner of the vehicle i.e. respondent No.2 lodged a report with the police and as a result of the same, crime No.278/2006 came to be registered under Section 379 read with Section 34 of I.P.C. Thereafter, it was revealed that the driver was also forcibly taken away and abducted and in the result, Section 365 I.P.C. also came to be added. The offence was registered against unknown persons. The said vehicle was taken to Turbhe, New Mumbai and was also recovered from there. Later on, it was disclosed that the vehicle was forcibly taken away by some musslemen engaged by the petitioner-Bank for recovery of the four instalments which the respondent had defaulted. The petitioner, which is a multi-national Bank, has filed this Petition to quash crime No.278/2006 registered by the Nirmal Nagar Police Station, Bandra (East).

3. The petitioner also does not deny that the vehicle was seized by an agency employed by it for the purpose of recovery of the loan amount. As per the affidavit filed by PSI Vishwanath Phatangare from Nirmal Nagar Police Station the petitioner-Bank has not been co-operative in the investigation of the case and the

Bank has not even disclosed even the names of the persons who had actually taken away the vehicle and, therefore, the investigation could not proceed.

4. The learned Counsel contends that as per clause 6(b) of the loan-cum-hypothecation agreement, the petitioner-Bank is entitled to take possession of the vehicle through its representatives, servants, agents, etc. in case of default in making payment of instalments and, therefore, no offence is committed. In support of the contention that the Bank could take possession of the vehicle as per the said terms, he relied upon the case of **Charanjit Singh Chadha and others vs. Sudhir Mehra reported in (2001) 7 SCC 417** wherein there was hire-purchase agreement. The owner - financier of the vehicle was entitled to take over possession of the vehicle if the hire-purchaser had defaulted in making payments of the hire purchase money. Their Lordships held that in such circumstances criminal offence was not made out. I find that this authority is not applicable to the present case. That was a case of hire-purchase agreement. The agreement relied upon by the petitioner itself clearly shows that it was a case of loan-cum-hypothecatioon and not a case of hire purchase. Recently, in **ICICI Bank Ltd. vs.Prakash Kaur & Ors. (Criminal Appeal No.267 of 2007 (Arising out of SLP (Cri.) No.15 of 2007) (decided on 26.2.2007) = 2007**

(3) SCALE 507. The judgment of the Supreme Court was delivered by two Hon'ble Judges. In para 14 of the Judgment delivered by His Lordship Mr.Justice AR Lakshmanan, the following observations were made :-

> "14. In conclusion, we say that we are governed by a rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The Banks cannot employ goondas to take possession by force."

In the separate but concurring Judgment delivered by His Lordship Mr.Justice Altamas Kabir, the following observations were made :-

> "12. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics."

5. In view of these observations made by the Hon'ble the Supreme Court, it becomes clear that the Bank should resort to the procedure recognized by law to take possession of the vehicle in case where the borrower may have committed default in payment of instalments and the Bank cannot be allowed to resort to strong arm tactics and they cannot be allowed to engage goondas or musclemen to take possession of vehicle. In my opinion, taking into consideration the facts and circumstances of the case, the Judgment of the Supreme Court in the case of ICICI Ltd. vs. Prakash Kaur & Ors. (cited supra) is aptly applicable. Prima facie, it appears that Bank has employed some agency who in turn engaged some musclemen/goondas to take forcible possession of the vehicle of the respondent. Prima facie, offence appears to have been committed. Investigation is necessary to find out the culprits. Hence, I find that it will not be in the interest of justice to quash the proceedings or to stop the investigation of the case.

5. In the result, the Petition stands dismissed.

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(J.H.BHATIA,J.)